## THE LEGAL RESPONSIBILITIES OF HOSPITAL AUTHORITIES.

A DISCUSSION on the legal responsibilities of hospital authorities towards their patients was opened at a meeting of the Medico-Legal Society, on April 26th, by Mr. Ross BROWN. He commenced by reviewing the decision of the Court of Appeal in Hillyer *v.* The Governors of St. Bartholomew's Hospital (1909), 2 K.B., 820. In that case the plaintiff, who was himself a registered medical practitioner, sued the defendants to recover damages for injuries which he alleged he had sustained through the negligent conduct of an operation at the hospital. It was alleged that his arm was burnt while he was on the operating table. The operation was conducted by a consulting surgeon who was attached to the hospital, but was not under the control of the defendants. During the operation he was assisted by members of the medical staff. It was held that the action did not lie. In the course of the judgement it was pointed out that the only duty undertaken by the governors of a public hospital towards a patient treated in the hospital was to use due care and skill in selecting their medical and nursing staff. The physicians and surgeons who gave their services at the hospital were employed to exercise their profession to the best of their abilities according to their own discretion, but in exercising it they were in no way under the orders, or bound to obey the directions, of the governors. Although the nurses employed at the hospital were servants of the governors for general purposes, they were not so for the purposes of operations conducted by the medical staff. Mr. Ross Brown pointed out, in this connexion, that, according to the view of the Court of Appeal, a public body was liable for the negligence of its servants in the same way as private individuals would be liable under similar circumstances, notwithstanding that it was acting in the performance of public duties, like a local board of health, or of eleemosynary and charitable functions, like a public hospital. The next case germane to the discussion was Hall *v.* Lees (1904), 2 K.B., 602. There an action was brought against a nursing home which sent out nurses to attend patients in the Oldham district. One of the nurses so sent out was guilty of negligence in the course of treating a patient. It was held that upon the true construction of the documents in the case—for example, the rules of the association, etc.—the contract of the association was not to nurse the female plaintiff through the agency of the nurses as their servants, but merely to procure for her duly qualified nurses, and that the nurses were not, in nursing the female plaintiff, acting as the servants of the association; and therefore the defendants were not liable in respect of negligence of the nurses supplied by them. Mr. Ross Brown said that having regard to the decision of Mr. Justice Walton in Evans *v.* Liverpool Corporation (1906), 1 K.B., 160, the position of a rate-supported hospital seemed to him rather more favourable than that of an ordinary hospital. The learned judge had then said:

> It would be a very serious burden upon public bodies who carry on similar hospitals. . . . In my opinion they undertake the duties of persons who manage and carry on the business of a hospital. . . . They do not undertake the duties of medical men, or to give medical advice, but they do undertake that the patients in their hospitals shall have competent medical advice and assistance, and it is admitted that Dr. Archer was a competent medical man, and that no blame attaches to the defendants for employing him. Assuming that he made a mistake, even a negligent mistake, I do not think that the defendants are liable for its consequences. . . . It is contended that the doctor was the servant of the defendants for the purpose of discharging the child, and that they are liable for the negligence of their servant, but the terms of his appointment and the rules under which he acted do not bear out this contention.

Having incidentally alluded to the American and New Zealand cases—MacDonald *v.* Massachusetts General Hospital (21 Amer. Rep., 529), Glavin *v.* Rhode Island Hospital (34 Amer. Rep., 675), and the District of Auckland Hospital and Charitable Aid Board *v.* Lovett (10 N.Z.L.R., 597)—Mr. Ross Brown pointed out that the result of the decisions appeared to be that the authorities of public hospitals do not undertake the duties of medical men or to give medical advice, but they do undertake that the patients shall have competent medical advice and assistance. Their obligation was that the patient should be treated only by experts, whether surgeons, physicians, or nurses, of whose professional competence the hospital governors had taken reasonable care to assure themselves. The relation of master and servant did not exist between the governors and the professional staff, and provided reasonable care had been exercised in selecting a competent staff and proper apparatus and appliances, the governors were not liable for the negligence of the staff. The nurses and others assisting at an operation ceased for the time being to be servants of the governors of the hospital, inasmuch as they were under the sole orders of the operating surgeon, who, until the operation was completely finished, was supreme. The contract of the hospital authorities was not to nurse during the operation, but to supply nurses and others in whose selection they had taken due care. It was remarkable, added Mr. Ross Brown, that although some of these great institutions had been actively discharging their philanthropic duties for centuries, and many thousands of the population were medically or surgically treated within their walls every year, the law courts of this country had only of recent years been called upon to discuss the principles governing the relationship of hospital authorities and patients. It was gratifying to find that the result of these judicial decisions was not calculated to discourage or in any way cripple the noble work which our hospitals were performing in the relief of human suffering.

## SCIENCE NOTES.

ALTHOUGH the elm can never hope to occupy amongst trees the honoured and enviable position of the oak, yet it has many claims on our regard. It is a stately and graceful tree, and imparts an air of beauty to its surroundings, and for these characteristics it has been chosen to adorn many an imposing avenue. Essentially a lowlander, it is found in greatest profusion along the banks of our main rivers, yet it makes its way up mountain valleys, and the wych elm is most abundant in hilly parts. There are several varieties of elm found in Britain, but authorities have hitherto not been in agreement as to their relative distinctness as species on the one hand, and as to their being truly British trees on the other. The matter is discussed at some length by the Rev. Augustus Ley in the *Journal of Botany* for March. He refers to the confusion in nomenclature resulting from the inadequacy of early descriptions and the absence of type specimens, but considers that the differentiation of the various forms ought to be easy. The mature samara, or seed case, should afford the best means of differentiation, but herein lies one of the peculiarities of the elm tree. It is not alone by seeds that it effects propagation; it has the additional resource of underground suckers. Yet that is not true in every case, for the wych elm (*Ulmus scabra*) possesses no suckers, and reproduces itself entirely by means of seeds. Mr. Ley recognizes five species, one of which, the Huntingdon elm, is universally regarded as a hybrid between the wych elm and the smooth-leaved witch elm (*Ulmus glabra*). We may therefore take it that there are four species of indigenous British elms. *Ulmus glabra* is native only in the southern parts of England, but is common throughout the whole country as a planted tree, and it is the one which is especially suitable for avenues. There are four varieties. The third species, *Ulmus major*, is scattered throughout the lowlands of England and Wales, and extends up the mountain valleys. The fourth is the English elm (*Ulmus surculosa*), and its name is unusually appropriate, for it is found nowhere else in Europe, although it has been planted in a few places on the Continent. It is the most peculiar member of the family, for it propagates only by suckers. It bears seeds, it is true, but not till 40 years old, then only in scanty numbers, and they always abort. It was for this reason that for a long time it was considered not to be indigenous to Britain, but Mr. Ley shows the solution of the mystery lies in the great development of the suckers. The change in the method of reproduction can be traced from the wych elm through the other species to the English elm.

Br Med J: first published as 10.1136/bmj.1.2574.1066 on 30 April 1910. Downloaded from http://www.bmj.com/ on 19 April 2024 by guest. Protected by copyright.